

## **APPENDIX 8**

### ***Legislative, Statutory, and Appellate Influences on Child Welfare***

# **Legislative, Statutory and Appellate Influences on Child Welfare**

## **1.CHILD ABUSE REPORTS**

The number of mandated reporters and types of reports have increased resulting in the number of referrals and cross reports also increasing. The knowledge required by a social worker that is attained through training has broadened to include these new issues.

- **Assembly Bill (AB) 327, c. 83, '97.** Added statutory rape to the definition of reportable child sexual abuse.
- **Senate Bill (SB) 1695, c. 459, '92.** Added District Attorney Child Support Investigators and other peace officers and child visitation monitors as mandated reporters.
- **SB 665, c. 510, '93.** Added firefighters and animal control officers as mandated reporters.
- **AB 1133, c. 132, '91 and AB 3521, c. 931, '90.** Added employees of youth recreational organizations and parole officers to the list of child care custodians who are mandated reporters.
- **AB 4585, c.1580, '88.** Added medical examiners and coroners as mandated reporters

## **2. AID TO FAMILIES WITH DEPENDENT CHILDREN – FOSTER CARE (AFDC-FC) PAYMENTS**

The establishment of foster care eligibility has become more complex.

- **AB 1542, c. 270, '97.** In establishing the CalWORKS program, de-linked AFDC-FC eligibility from CalWORKS, required separate eligibility determination.
- **All County Letter (ACL) 94-15, 2-15-94.** Required the Re-determination of Deprivation every 6 months on all federal foster care (FC) cases including Permanent Placement (PP), and documentation of good faith effort to contact and search for absent parents.
- **SB 35, c. 69, '93.** Established the Specialized Care Incentives and Assistance Program (SCIAP) as a separate assessment/payment program for foster children with special needs.
- **All County Information Notice (ACIN) I-15-93.** Required counties to re-implement Emergency Assistance IV-A in 3 phases; I for Probation Foster Care (FC) placements by 7-1-93, II for Child Welfare Service (CWS)- FC placements by 9-1-93 and III for CWS services to families by 8-1-94
- **SB 510, c 1066, '88.** Required Infant Supplemental Payment for minor parent; requires written assessment of minor parent's special needs.
- **ACL 87-39, 3-17-87.** Required sending state to document child's Medicaid status when placing out of state.

## **3. OUT OF HOME CARE**

Increased services to special populations in Out of Home Care

- **SB 933, c. 311, '98.** Declared that out-of-state placements by social services or probation are subject to Interstate Compact on the Placement of Children (ICPC) and the California Department of Social

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Services (CDSS) is the single state agency to administer ICPC with authority to investigate allegations of abuse. Counties are required to obtain an assessment and a placement requirement by a county multi-disciplinary team (MDT) prior to placing a child out-of-state in a group home.

The MDT shall consist of members from county social services, mental health, probation, county schools and others as determined by the county. Failure by an out-of-state group home to obtain or maintain certification shall preclude use of any federal, state or county funds for out-of-state group care.

This section does not apply to placements of severely emotionally disturbed (SED) (AB 3632) children. Only homes currently authorized under ICPC for placement can receive out-of-state placements pending certification by CDSS.

- **AB 2329, c. 275, '96.** Required social workers to keep foster parent's address confidential until the dispositional hearing and a parent-child visit in the agency office was arranged.
- **AB 908, c. 307, '95.** Required social workers to make in-person response within 20 days to report of minor parent's jeopardy in the home of senior parent. Requires Family Maintenance (FM) services be provided to nonexempt minor parent who is not placed in foster care. These FM services shall continue until minor parent attains age 18.
- **SB 17, c. 663, '94.** Required all reunification plans to provide for sibling visits unless detrimental and review this order every 6 months.
- **AB 2129, c. 1089, '93.** Provided for new legal consent for relatives of Long Term Foster Care (LTFC) children for medical and educational purposes, the same as parents. Required out-of-county placement reasons be documented in the case record and the receiving county be advised of child's dangerous behavior via case management system (CMS).
- **AB 2129, c. 1089, '93 and SB 17, c. 663, '94.** Required County Welfare Departments (CWD) to make diligent efforts to place siblings together, plan for frequent visitation for siblings placed apart and documentation in the case plan. Counties are required to evaluate placement resources, examine out-of-county and out-of-state placements and develop resources for placements in county.
- **Public Law (PL) 102-322, '90.** Created a Special Immigrant Juvenile Status for foster children that legalizes permanent residency for these youths and permits payment of AFDC-FC upon filing complex residency application with the Immigration and Naturalization Service.
- **PL 101-239, '89 and SB 615, c. 1370, '90.** Required documentation in a child's case record of health and education records for all foster children.
- **PL 100-647.** Extended Independent Living Program (ILP) to non-federally eligible youth.
- **AB 2268, c. 1437, '89 and SB 1466, c. 1175, '89.** Established placements for children with special health care needs, limited placements to 2 per specialized home, required county plan to implement and train providers.

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- **PL 92-272, 84.** Authorized federal funding for establishment of Independent Living Program (ILP) for 16-18 year old foster youth.

### **Increased screening of caregivers**

- **SB 645, c. 949, '98.** Required fingerprinting of all adults in a relative home prior to placement.
- **AB 1196, c. 268, '97.** Established criteria for assessing the safety of a relative's home for placement, including review of criminal records.
- **SB 426, c. 892, '93.** Requires the social worker to investigate all possible relatives for placement. Provided standards to evaluate relative when replacing minor.
- **AB 2617, c. 1570, '90.** Required full criminal records including arrests for screening foster and adoptive parents be completed.

### **Increased efforts in matching children with families**

- **AB 2129, c. 1089, '93 and SB 17, c. 663, '94.** See above
- **SB 243, c. 1485, '87 and SB 1860, c. 1075, '88.** Reorganized and restructured juvenile court dependency law, most of which was not operative until 1-1-89. Provisions include:
  1. Welfare and Institutions Code (WIC) 300 jurisdictional grounds for dependency were redefined with more specificity.
  2. The process for freeing a child for adoption was moved from Civil Code (CC) Section 232, and fully integrated into dependency law by the creation of the selection and implementation hearing, set 120 days from the permanency hearing.
  3. Contents of the adoptability assessment report required at the WIC Section 366.26 hearing are specified.
  4. Created five specific circumstances under which the parents may not be offered reunification services.
  5. Visitation shall be continued pending the WIC 366.26 hearing unless it is found to be detrimental.
  6. Defined a 4<sup>th</sup> option at the WIC 366.26 hearing, a search for an adoptive home for 60 days.

### **CWS Case Management**

- **SB 1125, c. 1203, '91.** Reorganized Child Welfare Services into one program with 4 components Emergency Response (ER), Family Maintenance (FM), Family Reunification (FR) and Permanent Placement (PP). Strengthened the case plan requirements for children and families so that family progress and changes are more closely monitored. Required case plans be written within 30 days of removal. Allows service-funded activities to be provided as needed in the child's case plan and as determined by the county. Expanded respite care from 48 to 72 hours and to in-home cases. Frequency of social worker contacts must be documented in the case plan. Changed the quarterly Family Maintenance (FM) reassessment to once every 6 months. Permitted an additional six-month extension of Family Reunification (FR) services in certain Permanent Placement

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(PP) cases. Resulted in the CDSS drafting of Division 31 Regulations.

- **SB 1407, c. 900, '94.** Authorized juvenile courts to appoint a legal guardian at the Dispositional hearing in lieu of dependency if parents do not want FM or FR services and all parties agree. The social worker must assess the suitability of the proposed guardian.

### **Enhanced Activities for Permanence**

- **SB 1901, c. 1055, '98.** Created KinGAP, a Temporary Assistance for Needy Families (TANF) subsidized guardianship payment program to permit assessed and approved relatives to become guardians and exit foster care and court oversight.
- **SB 1482, c. 355, '98.** Required a more extensive report on steps made to finalize adoption at each 6 month PP report when adoption is the case plan goal.
- **AB 1193, c. 794, '97.** Created Kinship Support Services Program for community based services for relative caregivers post permanency.
- **AB 1544, c. 793, '97.** Added documentation to court reports about advisement of voluntary relinquishment and relative placement assessment criteria. Required the social worker to query parents about all maternal and paternal relatives. Added a 13th circumstance for not ordering reunification services, parents decline to receive FM or FR services. Required courts to make paternity determinations at the detention hearing and order FR services to mothers and presumed fathers. The social worker is to document in the court report concurrent planning efforts and foster-adopt placements if any. Evidence of concurrent planning can't be deemed a failure to provide FR services.
- **AB 2154, c. 1138, '96.** Required the permanency planning hearing to be held every 12 months instead of every 18 months.

## **4. COURT REQUIREMENTS (STATUTE)**

Required judicial determinations and their complexities have increased. As such, related social worker investigations and reports to the court have increased and become more complex.

Legislation passed in 1982 (SB 14), 1986 (SB 1195), and 1987 (SB 243) enacted a substantial revision of California dependency law intended to afford children maximum protection from abuse and neglect, reunite families whenever possible, and expeditiously secure permanent homes for children who cannot be reunited with their families.

After a social worker investigates an allegation of child abuse or neglect, he or she must decide whether to leave the child in the home, leave the child in the home and provide services to the family, or remove the child from the home. If the child is removed from the home, three initial hearings take place. The court will first hold a detention hearing within the next 72 hours to determine if continued detention is warranted. If the child is detained, the court must hold a jurisdiction hearing within the next 15 days. At the jurisdiction hearing, the court determines whether the child meets California's definition of an abused or

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neglected child. If the court determines that the child meets this definition, it takes jurisdiction over the child. At the disposition hearing held within the next 60 days, the court will make all appropriate orders regarding the child's placement and any reunification services to be provided to the parents. The court will then review the parents' progress at status review hearings held every six months. Parents generally have a maximum of 18 months to reunify with their child. If they are unable to do so, the court will choose a permanent plan for the child which may entail terminating parental rights. The preferred permanent plan is adoption, followed by guardianship, and then long-term foster care. The court will continue to monitor the child's permanent plan until the child is in a permanent placement and the court's jurisdiction is dismissed.

- **AB 2773, Committee on Human Services, Chapter 1056, 1998.** Conforms provisions of federal Adoption and Safe Families Act of 1997 to State Statute
- **AB 1544, c. 793, '97.** Established alternate kin adoptions; required the juvenile court to determine paternity at the detention hearing; permitted birth parents and adoptive parents to enter into a kinship agreement on post-adoptive visits and contacts; established criteria to assess relatives for emergency and long term placement; required documentation of concurrent planning in case plan and court reports by the social worker; required advising birth parents of option of relinquishment; required documentation of out-of-state placement rationale; and required the social worker to disclose to relatives being assessed for placement reasons the child is in care.
- **SB 86, c. 36, '96.** Required a written social study for the jurisdictional hearing and the social worker to be available for cross-examination.
- **AB 1524, c. 1083, '96.** Authorized expedited permanency for infants and toddlers under 3 years of age by limiting FR services to 6 months. Added 4 more circumstances - abandonment, sibling has permanent plan, parent convicted of violent felony, parental substance abuse - for not ordering FR services. Provided that a finding that adoption is detrimental because foster parent does not want to adopt, does not apply when client is under age six or member of sibling group. Authorized the county licensing agency to purchase services from licensed private agencies.
- **AB 3441, c. 495, '92.** Required the social worker to ask parents about which relatives they want considered for placement. Required documentation by the social worker in the court report.
- **SB 475, c. 820, '91.** Required the social worker to document in the adoption assessment required for the WIC 366.26 hearing a case-by-case review of the minor's contact with his extended family-siblings, grandparents, aunts and uncles.
- **ACL 89-26.** Expanded the application of Indian Child Welfare Act (ICWA) to non-federally recognized tribes for adoption purposes.
- **SB 243, c. 1485, '87 and SB 1860, c. 1075, '88.** Reorganized and restructured juvenile court dependency law, most of which was not operative until 1-1-89. Provisions include:  
WIC 300 jurisdictional grounds for dependency were redefined with more specificity. The process for freeing a child for adoption was

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moved from Civil Code (CC) 232, and fully integrated into dependency law by the creation of the selection and implementation hearing, set 120 days from the permanency hearing. Contents of the adoptability assessment report required at the .26 hearing are specified. Created five specific circumstances under which the parents may not be offered reunification services. Visitation shall be continued pending the .26 hearing unless found detrimental. Defines a 4th option at the .26 hearing, a search for an adoptive home for 60 days.

- **SB 1195, c. 1122, '86.** Authorized the use of either FR or FM services to non-custodial parents.

### **5. EMERGENCY RESPONSE**

Process and "case" management requirements have increased.

- **SB 644, c. 842, '97 and AB 1065, c. 844, '97.** Permitted CWD's to access Department of Justice (DOJ) Child Abuse Central Index (CACI) for relative and guardian placements. Required CWD's to notify the alleged perpetrator in writing of report to CACI. Required CWD's to be responsible for accuracy and retention of reports. Required notice to alleged perpetrator when DOJ CACI releases information at the request of the CWD.
- **SB 86, c. 36, '96.** Required a social study for jurisdictional hearing and makes hearsay admissible. The social worker must be available for cross-examination on report. Witness of hearsay evidence may be subpoenaed.
- **AB 908, c. 307, '95.** Required the Child Protective Services (CPS) social worker to make an in-person response within 20 days to report of minor parent's jeopardy in the home of senior parent. Requires FM services be provided to nonexempt minor parent who is not placed in foster care. These FM services shall continue until minor parent attains age 18.
- **AB 1579, c. 469, '94.** Required that the social worker consider prior to removal if non-offending caregiver can protect the child and whether perpetrator will voluntarily leave the home and stay out. Additional documentation is now required for detention hearing court report.
- **AB 60, c. 780, '91.** Mandated an Emergency Response Protocol for telephone screening of all child abuse/neglect referrals. Mandated criteria to be used to assess out referrals and prescribed the use of state form. Training on the protocol to be part of the statewide CWS Training Program.
- **SB 1219, c. 1459, '87.** Defined the criteria for an in-person response, either immediately or within 10 days. Defined when a case may be assessed out based on evaluation of risk.

### **6. LAWS MANDATING/ ENCOURAGING INTERFACE WITH OTHER AGENCIES: COLLABORATION ON SERVICE DELIVERY**

The use of multi-disciplinary, interagency teams or councils is required for Interstate placements and/or in conjunction with specific CWS programs or initiatives.

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- **SB 933, Thompson, Chapter 311, 1998.** Declared out-of-state placements by social services or probation are subject to the Interstate Compact on the Placement of Children (ICPC) and that the California Department of Social Services (CDSS) is the single state agency to administer ICPC with authority to investigate allegations of abuse. Counties are required to obtain an assessment and a placement requirement by a county multi-disciplinary team (MDT) prior to placing a child out-of-state in a group home. The MDT consists of members from county social services, mental health, probation, county schools and others as determined by the county. Failure by an out-of-state group home to obtain or maintain certification shall preclude use of any federal, state or county funds for out-of-state group care. This section does not apply to placements of SED (3632) children. Only homes currently authorized under ICPC for placement can receive out-of-state placements pending certification by CDSS.
- **AB 3364, c. 961, '94.** Enacted the federal Family Preservation and Family Support Program (FPSP), a 5-year federally funded program. Designated CWD's as the lead agency, specified percentages each county may allocate to FS or FP, described the local planning process.
- **AB 1377, c. 199, '94.** Required counties to establish Interagency Placement Committees with Co. Mental Health to approve placements at Rate Classification Level (RCL) 13 and 14.
- **AB 2204, c.292, '92.** Permitted counties to participate in federal Housing and Urban Development (HUD) Section 8 housing program to prevent foster care and assist in early reunification.
- **SB 620, c.759, '91.** Created Healthy Start Support Services for children to award grants to schools to establish one-stop centers for a variety of services including outstationed CPS workers.
- **AB 3010, c. 1688, '90.** Authorized counties to create local Perinatal Coordinating Councils to be eligible for planning grants.
- **SB 997, c. 1303, '89.** Authorized the county Board of Supervisors to establish an Interagency Children's Services Coordination Council. Duties included identification of gaps in service, interagency case management and county planning for service delivery. Allowed the council to request waivers of state regulations that act as barriers to collaboration.
- **AB 3871, c. 1314, '88.** Established pilot projects for child abuse prevention and treatment. Authorized the establishment of multidisciplinary teams, training and qualifications of members, and disclosure of information.

### **7. INCREASED MANDATED SERVICES TO FAMILIES (FAMILY REUNIFICATION)**

Under certain circumstances, social workers must consider and plan for specific family members in family reunification cases.

- **AB 1542, c. 270, '97.** Established the CalWORKs program, California's welfare reform based on federal TANF Act of '96. Necessitated the coordination of the CPS FM/FR case plan with the



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parent's welfare-to-work plan. Required the CPS social worker to assess needy relative caregivers for exemption from work activities.

- **SB 17, c. 663, '94.** Required all reunification plans to provide for sibling visits unless detrimental and review this order every 6 months.
- **AB 2129, c. 1089, '93 and SB 17, c. 663, '94.** See above.
- **SB 475, c. 820, '91.** Provided that the Juvenile Court shall be determinant of admission to Community Treatment program of a female prisoner and her dependent child. Admission must be based on child's best interests. Described required FR services to incarcerated parents if such services are not detrimental to the child. Required court to find services were reasonable.
- **SB 551, c. 913, '89.** Required the social worker to document in the court report whether grandparent visitation is in the child's best interest.

### **8. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)/ COURTESY SUPERVISION**

The counties and their social workers have greater responsibility for out-of-state placements of children.

- **SB 933, c311, '98.** Under the schedule of social work visits, for out-of-state placements, either the social worker or the other state's supervising agency must visit the child in a foster family or relative placement at least every 12 months. For out-of-state group home placements, contact must be monthly.
- **ACL 93-66.** Delegated to each county the responsibility to perform duties of State ICPC Coordinator.

### **9. RECORDS CHECKS**

Specific process requirements were added that directly impact social workers and support staff.

- **AB 1423, c. 491, '93.** Required DOJ Child Abuse Central Index (CACI) to release information on suspected child abusers to licensed adoption agencies for clearing applicants. Allows DOJ to charge fee.
- **AB 2617, c. 1570, '90.** Required full criminal records including arrests for screening foster and adoptive parents.
- **SB 1532, c. 1053, '89.** Required notice to the licensing agency if an employee of Out of Home Care (OHC) facility is arrested for child abuse.
- **ACL 87-99, 8-1-87.** Mandated use of a 10-day notice of action and holding of State Fair Hearings in response to appeals on any non-court CWS case action.

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### 10. APPELLATE COURT RULINGS

Since 1985, the California Court of Appeals has ruled in a number of cases. These rulings have had an impact upon the workload of social workers.

#### General Jurisdiction:

The broad language of Welfare and Institutions Code section 300 embraces a wide variety of concrete medical and/or physical conditions children suffer, or are at substantial risk of suffering, which come within the parameters of serious physical harm or illness, or the risk of serious physical harm or illness, for the purposes of the statute. (See *In re Sylvia R.* (1997) 55 Cal.App.4<sup>th</sup> 559, *In re Heather A.* (1996) 52 Cal.App.4<sup>th</sup> 183, *In re Basilio T.* (1992) 4 Cal.App.4<sup>th</sup> 155 and *In re Jon N.* (1986) 179 Cal.App.3d 156 [domestic violence between the parents]; *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475 [alcohol abuse by the parent together with failure to adequately supervise one's children]; *In re Monique T.* (1992) 2 Cal.App. 4<sup>th</sup> 1372 [a child born with dangerous drugs in its body when the mother used illegal drugs during pregnancy, failed to obtain prenatal care, etc.]; *In re Stephen W.* (1990) 221 Cal. App.3d 629; *In re Rocco M.* (1991) 1 Cal. App.4<sup>th</sup> 814 [a child's ingestion of illegal drugs]; *In re Petra B.* (1989) 216 Cal.App.3d 1163 [parents' failure to obtain adequate medical treatment]; *In re Tania S.* (1992) 5 Cal.App.4<sup>th</sup> 728 [physical abuse of a child]; *In re Raymond G.* (1991) 230 Cal.App.3d 964 [failure to provide a child with adequate and proper nutrition.

#### Domestic Violence:

***In re Heather A.* (1996) 52 Cal.App.4<sup>th</sup> 183**

The court affirmed the order removing two girls from the father's custody, based on, among other evidence, a court-appointed psychologist's report describing the father's history of hostility and violence in relationships with others, including women. The expert coined the term "secondary abuse" which he defined as "children are affected by what goes on around them as well as what is directly done to them."

#### Admissibility, Evidence:

***Andrea L. v. Superior Court* (1998) 64 Cal.App.4<sup>th</sup> 1377**

Although written reports prepared by county welfare department are admissible at jurisdictional hearing only where preparer of report is available for cross-examination, once jurisdiction over minor has been established, admissibility of such reports is no longer conditioned on availability of author for cross examination.

#### Reunification Services:

***In re Joanna Y.* (1992) 8 Cal.App.4<sup>th</sup> 433**

Law requires that reasonable reunification services tailored to parents' individual needs be offered before parental rights may be terminated.

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***In re Christopher H.*** (1996) 50 Cal.App.4<sup>th</sup> 1001

Nothing in the child welfare services statutes limits the provision of reunification services solely to the allegation made in the petition. Here the court held that the trial court did not err when it ordered the father to submit to drug and alcohol testing as part of the reunification plan, even though it had not sustained that part of the petition alleging the child was at risk because of the father's substance abuse problems.

***Mark N. v. Superior Court*** (1998) 60 Cal.App.4<sup>th</sup> 996;

***In re Elizabeth R.*** (1995) 35 Cal.App.4<sup>th</sup> 1774, 1790-1792;

***In re Daniel G.*** (1994) 25 Cal.App.4<sup>th</sup> 1205, 1213-1214;

and ***In re Dino E.*** (1992) 6 Cal.App.4<sup>th</sup> 1768, 1777.

These cases provide or recognize other cases as providing authority for the juvenile court to order reunification services beyond the normal 18-month statutory limit, which impacted social workers' caseloads since it required cases to be kept open and services provided for periods longer than the statutes provide for.

***Jeff M. v. Superior Court*** (1996) 56 Cal.App.4<sup>th</sup> 1238;

***Renee S. v. Superior Court*** (1999) 76 Cal.App.4<sup>th</sup> 187.

These cases illustrate how the juvenile courts fail to hold hearings according to the statutory timelines. In *Jeff M.* the case went more than a year with the juvenile court not completing the jurisdiction hearing, notwithstanding the fact the law requires it complete both jurisdiction and disposition within 60 days. In *Renee S.* the juvenile court had gone more than 3 months without concluding jurisdiction. In these cases, the Courts of Appeal held the juvenile courts need to hear these cases in a far more timely fashion, including hearing them all day, every court day if necessary.

***In re Joel T.*** (1999) 70 Cal.App.4<sup>th</sup> 263.

In this case, although the mother had received 18 months of family maintenance services, the Court of Appeal held the provision of reunification services was required when the child was thereafter removed from parental.

### **Incarcerated Parent:**

***In re Dylan T.*** (1998) 65 Cal.App.4<sup>th</sup> 765

The particular factor of the minor's age, without some supporting evidence demonstrating how the age of the minor resulted in detriment when visiting the incarcerated parent, cannot be utilized by itself to deny visitation.

***In re Jonathan M.*** (1997) 53 Cal.App.4<sup>th</sup> 1234.

The Court of Appeal held the juvenile court could not arbitrarily order a 50-mile limitation on the distance a child could be taken to visit an incarcerated parent. Distance was one factor to be considered in determining whether visitation services should be provided, along with the other factors listed at Welfare and Institutions Code section 361.5, subdivision (e)(1).

## **11. RECENT STATUTORY CHANGES AND APPELLATE COURT RULINGS**

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The following recent statutory changes and appellate court rulings were not operational during the American Humane Association workload study. For that reason, they are not added to the groups above. However, they will impact the social worker's workload.

### **STATUTES:**

- **AB 65, c. 275, '99.** Eliminated the application of "existing Indian family" doctrine making more children eligible for Indian Child Welfare Act services.
- **SB 543, c. 522, '99.** Required the juvenile court approve all psychotropic medications for all children placed in foster care. It determines that the juvenile court is the only entity that can delegate this duty back to the parents.

### **APPELLATE COURT:**

**Calabretta v. Floyd (1999) 189 F.3d 808**

Absent consent, exigent circumstances, or a search warrant, neither social workers nor police officers may force entry into a home.